

Larry Cardwell appeals the denial of his motion for post-conviction relief (PCR). The post-conviction court found the State met its burden on its defense of laches. We affirm.

Cardwell was charged on November 1, 1971, with entering a dwelling house to commit a felony. He agreed to plead guilty, but was not advised of his fundamental rights to a trial by jury, to confront and cross-examine witnesses, and of his right against self-incrimination. He was sentenced on November 26, 1971. Cardwell filed his PCR petition on September 29, 2005.

The post-conviction court found the failure to advise Cardwell violated *Boykin v. Alabama*, 395 U.S. 1238 (1969), but the State asserted Cardwell's claim for relief was barred by laches. To prevail on a laches defense, "the State must prove by a preponderance of the evidence that the Petitioner's delay in filing for post-conviction relief was unreasonable and that the State would be prejudiced by the delay." *Stewart v. State*, 548 N.E.2d 1171, 1175 (Ind. Ct. App. 1990), *reh'g denied, trans. denied*.

Cardwell waited 34 years to file his PCR petition. "Prejudice exists when the unreasonable delay operates to materially diminish a reasonable likelihood of successful re-prosecution." *Id.* at 1176. Since his 1971 conviction Cardwell has had numerous contacts with the criminal justice system, resulting in at least five felony convictions. In 1993 he was charged with two counts of child molesting as Class D felonies, child molesting as a Class C felony, and with being an habitual offender.¹ This indicates a long

¹ The record does not indicate which of these charges resulted in convictions.

and involved relationship between the criminal justice system and Cardwell. *See id.* at 1175 (repeated contacts with the criminal justice system, consultation with attorneys, and incarceration in a penal institution with legal facilities are facts from which a fact-finder could infer knowing acquiescence that leads to unreasonable delay). Thirty-four years in the case before us is an unreasonable delay.

The State demonstrated it was prejudiced by the unreasonable delay. The parties stipulated the policy of the Vanderburgh County Prosecutor's Office was to destroy its files, in all but murder cases, after 10 years. The Evansville Police Department had no record of the case. At least three of the police officers involved in the 1971 investigation are deceased. The other five testified they had no independent knowledge of Cardwell's 1971 arrest and conviction. An investigator from the Vanderburgh Prosecutor's Office was unable to find some witnesses, but Cardwell's co-defendant indicated he would be willing to testify.

Given the 34-year delay, the lack of prosecution or police files, the death of three police witnesses and the inability of the rest to recall the case, we agree with the trial court that the State sustained its burden of proving laches.

Affirmed.

BAILEY, J., and SHARPNACK, J., concur.